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House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

HOUSE BILL 2107

AN ACT

AMENDING TITLE 44, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 16;
AMENDING SECTION 44-1522, ARIZONA REVISED STATUTES; RELATING TO COMMERCIAL
ELECTRONIC MAIL MESSAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, chapter 9, Arizona Revised Statutes, is amended
3 by adding article 16, to read:

4 ARTICLE 16. COMMERCIAL ELECTRONIC MAIL

5 44-1372. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "COMMERCIAL ELECTRONIC MAIL" MEANS ELECTRONIC MAIL SENT FOR THE
8 PURPOSE OF ENCOURAGING THE PURCHASE OR RENTAL OF, OR INVESTMENT IN, PROPERTY,
9 GOODS OR SERVICES.

10 2. "ELECTRONIC MAIL" MEANS AN ELECTRONIC MESSAGE, EXECUTABLE PROGRAM
11 OR COMPUTER FILE CONTAINING AN IMAGE OF A MESSAGE THAT IS TRANSMITTED BETWEEN
12 TWO OR MORE COMPUTERS OR ELECTRONIC TERMINALS AND INCLUDES ELECTRONIC
13 MESSAGES THAT ARE TRANSMITTED WITHIN OR BETWEEN COMPUTER NETWORKS.

14 3. "ELECTRONIC MAIL SERVICE PROVIDER" MEANS ANY PERSON WHO IS AN
15 INTERMEDIARY IN SENDING OR RECEIVING ELECTRONIC MAIL AND WHO PROVIDES TO END
16 USERS OF ELECTRONIC MAIL SERVICES THE ABILITY TO SEND OR RECEIVE ELECTRONIC
17 MAIL.

18 4. "ESTABLISHED BUSINESS RELATIONSHIP" MEANS A PRIOR OR EXISTING
19 RELATIONSHIP FORMED BY A VOLUNTARY COMMUNICATION BETWEEN A PERSON OR ENTITY
20 AND THE RECIPIENT, WITH OR WITHOUT AN EXCHANGE OF CONSIDERATION, ON THE BASIS
21 OF AN INQUIRY, APPLICATION, PURCHASE OR USE BY THE RECIPIENT REGARDING
22 PRODUCTS OR SERVICES OFFERED BY THE PERSON OR ENTITY.

23 5. "SENDER" MEANS A PERSON WHO INITIATES AN UNSOLICITED COMMERCIAL
24 ELECTRONIC MAIL.

25 6. "UNSOLICITED COMMERCIAL ELECTRONIC MAIL" MEANS A COMMERCIAL
26 ELECTRONIC MAIL MESSAGE, EXECUTABLE PROGRAM SENT, WITHOUT THE CONSENT OF THE
27 RECIPIENT, BY A PERSON WITH WHOM THE RECIPIENT DOES NOT HAVE AN ESTABLISHED
28 BUSINESS RELATIONSHIP.

29 44-1372.01. Regulations; powers of attorney general; cumulative
30 remedies

31 A. A PERSON SHALL NOT KNOWINGLY TRANSMIT COMMERCIAL ELECTRONIC MAIL IF
32 ANY OF THE FOLLOWING APPLY:

33 1. THE PERSON FALSIFIES ELECTRONIC MAIL TRANSMISSION INFORMATION OR
34 OTHER ROUTING INFORMATION FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

35 2. THE MAIL CONTAINS FALSE OR MISLEADING INFORMATION IN THE SUBJECT
36 LINE.

37 3. THE PERSON USES A THIRD PARTY'S INTERNET ADDRESS OR DOMAIN NAME
38 WITHOUT THE THIRD PARTY'S CONSENT FOR THE PURPOSE OF TRANSMITTING ELECTRONIC
39 MAIL IN A WAY THAT MAKES IT APPEAR THAT THE THIRD PARTY WAS THE SENDER OF THE
40 MAIL.

41 B. IF A PERSON SENDS UNSOLICITED COMMERCIAL ELECTRONIC MAIL OR
42 MAINTAINS A DATABASE FOR THE PURPOSE OF SENDING UNSOLICITED COMMERCIAL
43 ELECTRONIC MAIL, THE PERSON SHALL DO THE FOLLOWING:

44 1. USE THE EXACT CHARACTERS "ADV:" AS THE FIRST FOUR CHARACTERS IN THE
45 SUBJECT LINE OF THE UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

1 2. PROVIDE A PROCEDURE THAT ALLOWS RECIPIENTS, AT NO COST TO THE
2 RECIPIENTS, TO EASILY DO BOTH OF THE FOLLOWING:

3 (a) REMOVE THEMSELVES FROM THE SENDER'S ELECTRONIC MAIL ADDRESS LISTS
4 SO THE RECIPIENTS ARE NOT INCLUDED IN FUTURE ELECTRONIC MAILINGS FROM THE
5 SENDER.

6 (b) RESTRICT THE FUTURE SALE OR TRANSFER OF THE RECIPIENT'S ELECTRONIC
7 MAIL ADDRESS INFORMATION TO ANOTHER PERSON OR ORGANIZATION FOR THE PURPOSE OF
8 SENDING COMMERCIAL ELECTRONIC MAIL.

9 C. BEFORE A PERSON RECEIVES COMMERCIAL ELECTRONIC MAIL FROM A SENDER,
10 IF THE PERSON GIVES PERMISSION FOR THE SENDER TO SEND COMMERCIAL ELECTRONIC
11 MAIL TO THE PERSON, THE SENDER SHALL PROVIDE A PROCEDURE THAT ALLOWS THE
12 PERSON, AT NO COST TO THE PERSON, TO EASILY RESTRICT THE FUTURE SALE OF THE
13 PERSON'S NAME AND CONTACT INFORMATION, INCLUDING THE PERSON'S ELECTRONIC MAIL
14 ADDRESS INFORMATION.

15 D. FAILURE TO COMPLY WITH THIS ARTICLE IS AN UNLAWFUL PRACTICE
16 PURSUANT TO SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE
17 APPROPRIATE ACTION AS PRESCRIBED BY CHAPTER 10, ARTICLE 7 OF THIS TITLE.

18 E. THIS ARTICLE IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES
19 AND PENALTIES AVAILABLE TO THIS STATE.

20 44-1372.02. Damages

21 A. A PERSON WHOSE PROPERTY OR PERSON IS INJURED BECAUSE OF A VIOLATION
22 OF THIS ARTICLE MAY RECOVER FOR ANY DAMAGES SUSTAINED, INCLUDING LOSS OF
23 PROFITS, AND THE COSTS INCURRED FROM THE SUIT.

24 B. IF AN INJURY RESULTS FROM THE INTENTIONAL TRANSMISSION OF
25 UNSOLICITED COMMERCIAL ELECTRONIC MAIL, THE INJURED PERSON MAY RECOVER
26 ATTORNEY FEES AND COSTS AND MAY CHOOSE, INSTEAD OF RECEIVING ACTUAL DAMAGES,
27 TO RECOVER TEN DOLLARS FOR EACH UNSOLICITED COMMERCIAL ELECTRONIC MAIL
28 MESSAGE TRANSMITTED IN VIOLATION OF THIS ARTICLE OR TWENTY-FIVE THOUSAND
29 DOLLARS, WHICHEVER IS LESS. THIS SUBSECTION DOES NOT APPLY TO AN ELECTRONIC
30 MAIL SERVICE PROVIDER.

31 C. NOTHING IN THIS ARTICLE CREATES A CAUSE OF ACTION OR A RIGHT TO
32 BRING AN ACTION AGAINST THE ELECTRONIC MAIL SERVICE PROVIDER FOR TRANSMITTING
33 UNSOLICITED COMMERCIAL ELECTRONIC MAIL OVER THE COMPUTER NETWORK.

34 D. IF AN INJURY RESULTS FROM THE INTENTIONAL TRANSMISSION OF
35 UNSOLICITED COMMERCIAL ELECTRONIC MAIL, AN INJURED ELECTRONIC MAIL SERVICE
36 PROVIDER MAY RECOVER ATTORNEY FEES AND COSTS AND MAY CHOOSE, INSTEAD OF
37 RECEIVING ACTUAL DAMAGES, TO RECOVER TEN DOLLARS FOR EACH UNSOLICITED
38 COMMERCIAL ELECTRONIC MAIL MESSAGE TRANSMITTED IN VIOLATION OF THIS ARTICLE
39 OR TWENTY-FIVE THOUSAND DOLLARS, WHICHEVER IS GREATER.

40 44-1372.03. Court proceedings; secrecy

41 AT THE REQUEST OF ANY PARTY TO AN ACTION BROUGHT PURSUANT TO THIS
42 SECTION, THE COURT MAY CONDUCT ALL LEGAL PROCEEDINGS IN A MANNER TO PROTECT
43 THE SECRECY AND SECURITY OF THE COMPUTER, COMPUTER NETWORK, COMPUTER DATA,
44 COMPUTER PROGRAM AND COMPUTER SOFTWARE INVOLVED IN ORDER TO PREVENT POSSIBLE
45 RECURRENCE OF THE SAME OR SIMILAR ACT BY ANOTHER PERSON AND TO PROTECT ANY
46 TRADE SECRETS OF ANY PARTY.

44-1372.04. Applicability

A. THIS ARTICLE DOES NOT APPLY TO ELECTRONIC MAIL MESSAGES IF ANY OF THE FOLLOWING APPLIES:

1. THE SENDER IS AN ORGANIZATION USING ELECTRONIC MAIL TO COMMUNICATE EXCLUSIVELY WITH EITHER OF THE FOLLOWING:

(a) MEMBERS OF THE ORGANIZATION.

(b) EMPLOYEES OR CONTRACTORS OF THE ORGANIZATION, OR BOTH.

2. THE SENDER HAS THE CONSENT OF THE RECIPIENT.

3. THE SENDER HAS AN ESTABLISHED BUSINESS RELATIONSHIP WITH THE RECIPIENT.

4. THE COMMERCIAL ELECTRONIC MAIL MESSAGE IS THE RESULT OF AN ERROR.

5. AN INTERACTIVE COMPUTER SERVICE PROVIDER HAS ATTACHED AN ADVERTISEMENT TO THE MESSAGE IN EXCHANGE FOR USE OF AN ELECTRONIC MAIL ACCOUNT OR IF THE SENDER HAS AGREED TO THE ARRANGEMENT.

B. THIS ARTICLE DOES NOT APPLY TO AN ELECTRONIC MAIL SERVICE PROVIDER IF EITHER OF THE FOLLOWING APPLY:

1. THE ELECTRONIC MAIL SERVICE PROVIDER IS AN INTERMEDIARY BETWEEN THE SENDER AND THE RECIPIENT IN THE TRANSMISSION OF ELECTRONIC MAIL.

2. THE ELECTRONIC MAIL SERVICE PROVIDER TRANSMITS UNSOLICITED COMMERCIAL ELECTRONIC MAIL OVER THE PROVIDER'S COMPUTER NETWORK OR FACILITIES.

C. AN ELECTRONIC MAIL SERVICE PROVIDER SHALL NOT BE LIABLE FOR ANY ACTION IT VOLUNTARILY TAKES IN GOOD FAITH TO BLOCK THE RECEIPT OR TRANSMISSION THROUGH ITS SERVICE OF ANY ELECTRONIC MAIL ADVERTISEMENTS THAT IT BELIEVES IS OR WILL BE SENT IN VIOLATION OF THIS ARTICLE.

44-1372.05 Violation; classification

A PERSON WHO VIOLATES THIS ARTICLE IS GUILTY OF A CLASS 2 MISDEMEANOR.

Sec. 2. Section 44-1522, Arizona Revised Statutes, is amended to read:

44-1522. Unlawful practices; intended interpretation of provisions

A. The act, use, or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

B. The violation of CHAPTER 9, ARTICLE 16 OR chapter 19, article 1 of this title is declared to be an unlawful practice and subject to enforcement under this article.

C. It is the intent of the legislature, in construing ~~the provisions of~~ subsection A ~~of this section~~, that the courts may use as a guide interpretations given by the federal trade commission and the federal courts to 15 United States Code sections 45, 52 and 55(a)(1).